IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 27 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

SUBHASH FAMILY TRUST

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Appearance:

1. INCOME TAX REFERENCE No. 27 of 1994
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income-tax Appellate Tribunal has referred the following question at the instance of the Commissioner for assessment year 1983-84 :-

"Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee trust is a specific trust and further holding that the provisions of section 164 were not applicable in the instance case ?"

2. We have heard Mr Akil Kureshi, learned counsel for the revenue. Though served, none appears for the respondent-assessee. The Tribunal relied upon its own order in assessee's own case for assessment years 1981-82 and 1982-83. At the time of hearing, Mr Kureshi invited our attention the decision of this Court dated 11.11.1998 in Income-tax Reference No. 111 of 1984 in assessee's own case wherein on an identical controversy it was held by this Court that the assessee-trust is a specific trust. This decision was rendered after taking into consideration of the term of the trust deed. In the present reference, nothing has been brought on record to show that there is any distinguishing feature for the year under consideration.

3. In view of this fact situation, we hold that the Tribunal was right in law in holding that the assessee trust is a specific trust and as a consequence provisions of Section 164 of the Income-tax Act, 1961 are not applicable. The question referred to us is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

The reference is disposed of accordingly with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-